Utah Rules of Civil Procedure

Rule 37. Failure to make or cooperate in discovery; sanctions.

(a) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

(2) Motion.

(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or incomplete disclosure, answer, or response. For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(4) Expenses and sanctions.

(A) If the motion is granted, or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the motion was filed without the movant=s first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party=s nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after opportunity for hearing, require the moving party or the attorney or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after opportunity for hearing, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

(1) Sanctions by court in district where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by court in which action is pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 16(b), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) an order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) where a party has failed to comply with an order under Rule 35(a), such orders as are listed in Paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney or both of them to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the party requesting the admissions may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under Paragraphs (A), (B), and (C) of Subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the party's

attorney or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Failure to participate in the framing of a discovery plan. If a party or attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.

(f) Failure to disclose. If a party fails to disclose a witness, document or other material as required by Rule 26(a) or Rule 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), that party shall not be permitted to use the witness, document or other material at any hearing unless the failure to disclose is harmless or the party shows good cause for the failure to disclose. In addition to or in lieu of this sanction, the court may order any other sanction, including payment of reasonable costs and attorney fees, any order permitted under subpart (b)(2)(A), (B) or (C) and informing the jury of the failure to disclose.

Utah Rules of Appellate Procedure

Rule 27. Form of briefs.

(a) Paper size; printing margins. Briefs shall be typewritten, printed or prepared by photocopying or other duplicating or copying process that will produce clear, black and permanent copies equally legible to printing, on opaque, unglazed paper 8 1/2 inches wide and 11 inches long, and shall be securely bound along the left margin. Paper may be recycled paper, with or without deinking. The printing must be double spaced, except for matter customarily single spaced and indented. Margins shall be at least one inch on the top, bottom and sides of each page. Page numbers may appear in the margins.

(b) Typeface. Either a proportionally spaced or monospaced typeface in a plain, roman style may be used. A proportionally spaced typeface must be 13-point or larger for both text and footnotes. Examples are CG Times, Times New Roman, New Century, Bookman and Garamond. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes. Examples are Pica and Courier.

(c) Binding. Briefs shall be printed on both sides of the page, and bound with a compact-type binding so as not unduly to increase the thickness of the brief along the bound side. Coiled plastic and spiral-type bindings are not acceptable.

(d) Color of cover; contents of cover. The cover of the opening brief of appellant shall be blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus curiae, green; that of any reply brief, or in cases involving a cross-appeal, the appellant's second brief, gray; that of any petition for rehearing, tan; that of any response to a petition for rehearing, white; that of a petition for certiorari, white; that of a response to a petition for certiorari, orange; and that of a reply to the response to a petition for certiorari, yellow. All brief covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover. The cover of all briefs shall set forth in the caption the full title given to the case in the court or agency from which the appeal was taken, as modified pursuant to Rule 3(g), as well as the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal. In addition, the covers shall contain: the name of the appellate court; the number of the case in the appellate court opposite the case title; ~~the priority number of the case, as set forth in Rule 29;~~ the

title of the document (e.g., Brief of Appellant); the nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review); the name of the court and judge, agency or board below; and the names and addresses of counsel for the respective parties designated as attorney for appellant, petitioner, appellee, or respondent, as the case may be. The names of counsel for the party filing the document shall appear in the lower right and opposing counsel in the lower left of the cover.

(e) Effect of non-compliance with rules. The clerk shall examine all briefs before filing. If they are not prepared in accordance with these rules, they will not be filed but shall be returned to be properly prepared. The clerk shall retain one copy of the non-complying brief and the party shall file a brief prepared in compliance with these rules within 5 days. The party whose brief has been rejected under this provision shall immediately notify the opposing party in writing of the lodging. The clerk may grant additional time for bringing a brief into compliance only under extraordinary circumstances. This rule is not intended to permit significant substantive changes in briefs.

Rule 29. Oral argument.

(a) In general. Oral argument will be allowed in all cases unless the court concludes:

(1) The appeal is frivolous; or

(2) The dispositive issue or set of issues has been recently authoritatively decided; or

(3) The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

~~(b) Priority of argument. Cases shall be scheduled for oral argument in accordance with the following list of priorities:~~

~~(1) Appeals from convictions in which the death penalty has been imposed;~~

~~(2) Appeals from convictions in all other criminal matters with priority to cases in which the defendant is incarcerated;~~

~~(3) Appeals from habeas corpus petitions and other post-conviction proceedings;~~

~~(4) Appeals from orders concerning child custody or termination of parental rights;~~

~~(5) Matters relating to the discipline of attorneys;~~

~~(6) Matters relating to applicants who have failed to pass the bar examination;~~

~~(7) Petitions for review of orders of the Department of Workforce Services and the Labor Commission;~~

~~(8) Appeals from the orders of the Juvenile Court;~~

~~(9) Appeals from actions involving public elections;~~

~~(10) Appeals from interlocutory orders;~~

~~(11) Questions certified to the Supreme Court by a court of the United States;~~

~~(12) Original writ proceedings;~~

~~(13) Petitions for certiorari that have been granted;~~

~~(14) Petitions to review administrative agency orders not included within other categories; and~~

~~(15) Any matter not included within the above categories.~~

~~(c)~~(b) Notice by clerk and request by a party for argument; postponement. Not later than 30 days prior to the term of court in which a case is to be submitted, the clerk shall give notice to all parties that oral argument is to be permitted, the time and place of oral argument, and the time to be allowed each side. Oral argument shall proceed as scheduled unless all parties waive the same in writing filed with the clerk not later than 15 days from the date of the clerk's notice. If one party waives oral argument and any other party does not, the party waiving oral argument may

nevertheless present oral argument. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

~~(d)~~(c) Order and content of argument. The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

~~(e)~~(d) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a separate appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument. Unless otherwise agreed by the parties, in cases involving a cross-appeal the appellant, as determined pursuant to Rule 24(g), shall open the argument and present only the issues raised in the appellant's opening brief. The appellee/cross-appellant shall then present an argument which answers the appellant's issues and addresses original issues raised by the cross-appeal. The appellant shall then present an argument which replies to the appellee/cross-appellant's answer to the appellant's issues and answers the issues raised on the cross-appeal. The appellee/cross-appellant may then present an argument which is confined to a reply to the appellant's answer to the issues raised by the cross-appeal. The court shall grant reasonable requests, for good cause shown, for extended argument time.

~~(f)~~(e) Non-appearance of parties. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if present. If neither party appears, the case may be decided on the briefs, or the court may direct that the case be rescheduled for argument.

~~(g)~~(f) Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

~~(h)~~(g) Use of physical exhibits at argument; removal. If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the argument. After the argument, counsel shall remove the exhibits from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

Rule 39. Duties of the clerk.

(a) General provisions. The office of the Clerk of the Court, with the clerk or a deputy in attendance, shall be open during business hours on all days except Saturdays, Sundays and legal holidays.

(b) The docket; calendar; other records required. The clerk shall keep a record, known as the docket, in form and style as may be prescribed by the court, and shall enter therein each case. The number of each case shall be noted on the page of the docket whereon the first entry is made. All papers filed with the clerk and all process, orders and opinions shall be entered chronologically in the docket on the pages assigned to the case. Entries shall be brief but shall show the nature of each paper filed or decision or order entered and the date thereof. The clerk shall keep a suitable index of cases contained in the docket.

(c) Minute book. The clerk may keep a minute book, in which shall be entered a record of the daily proceedings of the court. The clerk shall prepare, under the direction of the Chief Justice of the Supreme Court or the Presiding Judge of the Court of Appeals, a calendar of cases awaiting

argument. ~~In placing cases on the calendar for argument, the clerk shall give preference to appeals in accordance with the priority of cases provided in Rule 29.~~

(d) Notice of orders. Immediately upon the entry of an order or decision, the clerk shall serve a notice of entry by mail upon each party to the proceeding, together with a copy of any opinion respecting the order or decision. Service on a party represented by counsel shall be made upon counsel.

(e) Custody of records and papers. The clerk shall have custody of the records and papers of the court. The clerk shall not permit any original record or paper to be removed from the court, except as authorized by these rules or the orders or instructions of the court. Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received. The clerk shall preserve copies of briefs and attachments, as well as other printed papers filed.

Form 8. Checklist for Briefs - Rules 24, 26, and 27.

Deadlines for Filing

1. Appellant: 40 days from notice by clerk.
2. Appellee: 30 days from appellant's brief.
3. Reply: 30 days from appellee's brief.

Proof of Service

1. Upon counsel for all parties to the appeal.
2. In criminal appeals arising from a felony charge, upon the Attorney General.
3. In criminal appeals arising from a misdemeanor charge, upon the prosecuting attorney.
4. In appeals from the juvenile court, upon the Attorney General. See Section 78-3a-909.
5. Original signature required on proof of service.

Number of Copies

1. Supreme Court: Ten copies - one with original signature.
2. Court of Appeals: Eight copies - one with original signature.
3. Two copies served on counsel for each party separately represented.

Length

1. Appellant and Appellee: 50 pages, excluding addendum.
2. Reply: 25 pages, excluding addendum.
3. Petition for Rehearing: 15 pages, excluding addendum.

Size and Binding

1. Size: 81/2" x 11".
2. Binding: Compact or Vello binding required; coiled plastic or spiral binding not acceptable.

Printing Requirements

1. Margins at least one inch on top, bottom and sides of each page.
2. Proportionally spaced typeface must be 13-point or larger for both text and footnotes. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes.
3. Print on both sides of the page.
4. Double spaced; 11/2 line spacing is not acceptable.

Cover Requirements

1. Heavy weight paper.
2. Color:

Appellant or Petitioner ..... Blue

Appellee or Respondent ..... Red
Reply ..... Gray
Amicus, Intervenor, Guardian ..... Green
Petition for Rehearing ..... Tan
Response to Pet'n for Rehearing ..... White
Petition for Certiorari ..... White
Brief in Opposition to Cert ..... Orange
Reply to Brief in Opposition ..... Yellow

3. Caption of the Case:

a. full title of the case as it appeared in the trial court or agency;

b. designation of the parties as they appeared in the trial court or agency (e.g., "plaintiff/defendant");

c. designation of the parties as they appear in the appellate court (e.g., "appellant/appellee").

4. Name of the appellate court ("In the Utah Supreme Court") ("In the Utah Court of Appeals").

5. Appellate court docket number.

6. Title of the document (e.g., "Brief of the Appellant", "Brief of the Appellee").

7. Nature of the proceeding (e.g., "appeal", "petition for review").

8. Name of the trial court or agency and name of the judge (e.g., "Appeal from the Third District Court, Salt Lake County, Judge Smith").

9. Name of counsel and the parties they represent:

a. counsel filing brief on lower right;

b. opposing counsel on lower left.

~~10. Argument priority classification from Utah R. App. P. 29.~~

Content Requirements - In the Order Stated

1. List of all parties unless the caption on the cover shows all parties.

2. Table of contents with page references.

3. Table of authorities with page references: (a) cases listed alphabetically with parallel citations; (b) rules; (c) statutes; (d) other authorities.

4. Statement showing jurisdiction of the appellate court.

5. Statement of the issues. For each issue state the standard of review and supporting authority. (Optional with appellee if there is no disagreement with appellant's statement.)

6. Determinative constitutional provisions, statutes, ordinances, and rules set forth verbatim or by citation alone if they are set forth verbatim in the addendum.

7. Statement of the case (Optional with appellee if there is no disagreement with appellant's statement):

a. nature of the case;

b. course of proceedings;

c. disposition at trial court or agency.

8. Relevant facts with citation to the record.

9. Summary of the argument.

10. Detail of the argument.

11. Conclusion containing a statement of the relief sought.

12. Original signature of counsel of record or party appearing without counsel on one copy of brief; reproduced signature on other copies.

Addendum

1. Attach at end of brief or file separately.
2. Not counted against total page number.
3. Contents:

a. Reproduction of opinion, memorandum decision, findings of fact, conclusions of law, orders, or jury instructions;

b. Reproduction of parts of the record of central importance such as contracts or other documents;

c. Reproduction of determinative constitutional provisions, statutes, or rules.

Supplement to the Brief

1. By letter to the court. Original and nine copies to Supreme Court. Original and five copies to Court of Appeals.
2. File any time prior to decision, even after oral argument.
3. Citation of supplemental authority with statement of reason. No new argument.
4. Reference to page of brief or point in oral argument supplemented.
5. Response to be filed within seven days.

Motion for Enlargement of Time

1. By stipulation: Rule 26

a. first extension only;
b. limit: 30 days;
c. file prior to expiration of original deadline.

2. By motion: Rules 22 & 23

a. File prior to deadline; show original deadline sought to be extended;
b. Show number and length of previous extensions;
c. Give date certain on which brief will be filed;
d. Set forth facts constituting good cause for the request.

Utah Rules of Juvenile Procedure

Rule 7. Warrants for immediate custody of minors; grounds; execution of warrants; search warrants.

(a) The issuance and execution of a warrant is governed by Title 77, Chapter 7, Arrest, and by Section 78-3a-112 and Section 78-3a-113.

(b) After a petition is filed, a warrant for immediate custody of a minor may be issued if the court finds from the facts set forth in an affidavit filed with the court or in the petition that there is probable cause to believe that:

(1) the minor has committed an act which would be a felony if committed by an adult;

(2) the minor has failed to appear after the minor or the parent, guardian or custodian has been legally served with a summons;

(3) there is a substantial likelihood the minor will not respond to a summons;

(4) the summons cannot be served and the minor's present whereabouts are unknown;

(5) the minor seriously endangers others and immediate removal appears to be necessary for the protection of others or the public; or

(6) there are reasonable grounds to believe that the minor has run away or escaped from the minor's parent, guardian or custodian.

(c) A warrant for immediate custody of a minor may be issued if the court finds from the affidavit that the minor is under the continuing jurisdiction of the court and probable cause to believe that the minor:

(1) has left the custody of the person or agency vested by the court with legal custody and guardianship without permission; or

(2) has violated a court order.

(d) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

(1) an order that the minor be taken to the detention or shelter facility designated by the court at the address specified pending a hearing or further order of the court;

(2) the name, date of birth and last known address of the minor;

(3) the reasons why the minor is being taken into custody;

(4) a time limitation on the execution of the warrant;

(5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and

(6) the date, county and court location where the warrant is being issued.

(7) On verbal request from a probation officer or other authorized individual a warrant for custody may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the juvenile and shall be supported by an affidavit from the requesting authority the next court business day.

(e) Search warrants, with an order of immediate custody, may be issued in the manner provided by law ~~and Rule 35(c)~~.

(f) A peace officer who brings a minor to a detention facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the minor's immediate admission. A minor so admitted may not be released without court order.

(g) This rule shall not limit the statutory authority of a probation officer to take a minor who has violated a condition of probation into custody.

Rule 9. Detention hearings; scheduling; hearing procedure.

(a) The officer in charge of the detention facility shall provide to the court a copy of the report required by Section 78-3a-113. At a detention hearing, the court shall order the release of the minor to the parent, guardian or custodian unless there is reason to believe:

(1) the minor will abscond or be taken from the jurisdiction of the court unless detained;

(2) the offense alleged to have been committed ~~is of such a nature that it~~ would be a felony if committed by an adult;

(3) the minor's parent, guardian or custodian cannot be located;

(4) the minor's parent, guardian or custodian refuses to accept custody of the minor;

(5) the minor's parent, guardian or custodian will not produce the minor before the court at an appointed time;

(6) the minor will undertake witness intimidation;

(7) the minor's past record indicates the minor may be a threat to the public safety;

(8) the minor has problems of conduct or behavior so serious or the family relationships are so strained that the minor is likely to be involved in further delinquency; or

(9) the minor has failed to appear for a court hearing within the past twelve months.

(b) The court shall hold a detention hearing within 48 hours of the minor's admission to detention, weekends and holidays excluded. The officer in charge of the detention facility shall notify the minor, parent, guardian or custodian and attorney of the date, time, place and manner of such hearing.

(c) The court may at any time order the release of a minor whether a detention hearing is held or not.

(d) At the beginning of the detention hearing, the court shall advise all persons present as to the reasons or allegations giving rise to the minor's admission to detention and the limited scope and purpose of the hearing as set forth in paragraph (g). If the minor is to be arraigned at the detention hearing, the provisions of Rules 24 and 26 shall apply.

(e) The court may receive any information, including hearsay and opinion, that is relevant to the decision whether to detain or release the minor. Privileged communications may be introduced only in accordance with the Utah Rules of Evidence.

(f) A detention hearing may be held without the presence of the minor's parent, guardian or custodian if they fail to appear after receiving notice. The court may delay the hearing for up to 48 hours to permit the parent, guardian or custodian to be present or may proceed subject to the rights of the parent, guardian or custodian. The court may appoint counsel for the minor with or without the minor's request.

(g) If the court determines that no reasonable basis exists for the offense or condition alleged as required in Rule 6 as a basis for admission, it shall order the minor released immediately without restrictions. If the court determines that reasonable cause exists for continued detention, it may order continued detention, place the minor on home detention, or order the minor's release upon compliance with certain conditions pending further proceedings. Such conditions may include:

(1) a requirement that the minor remain in the physical care and custody of a parent, guardian, custodian or other suitable person;

(2) a restriction on the minor's travel, associations or residence during the period of the minor's release; and

(3) other requirements deemed reasonably necessary and consistent with the criteria for detaining the minor.

(h) If the court determines that a reasonable basis exists as to the offense or condition alleged as a basis for the minor's admission to detention but that the minor can be safely left in the care and custody of the parent, guardian or custodian present at the hearing, it may order release of the minor upon the promise of the minor and the parent, guardian or custodian to return to court for further proceedings when notified.

(i) If the court determines that the offense is one governed by Section 78-3a-601, Section 78-3a-602, or Section 78-3a-603, the court may by issuance of a warrant of arrest order the minor committed to the county jail in accordance with Section 62A-7-201.

(j) Any predisposition order of detention or home detention shall be reviewed by the court once every seven days. The court may, on its own motion or on the motion of any party, schedule a detention review hearing at any time.

Rule 57. Change of judge as a matter of right.

(a) Notice of change. In any action commenced in the juvenile court after April 15, 1992, all parties joined in the action may, by unanimous agreement and without cause, change the judge assigned to the action by filing a notice of change of judge. The parties shall send a copy of the notice to the assigned judge and the presiding judge. The notice shall be signed by all parties and shall state: (1) the name of the assigned judge; (2) the date on which the action was commenced; (3) that all parties joined in the action have agreed to the change; (4) that no other persons are expected to be named as parties; and (5) that a good faith effort has been made to serve all parties named in the pleadings. The notice shall not specify any reason for the change of judge.

Under no circumstances shall more than one change of judge be allowed under this rule in an action.

(b) Time. In other actions involving neglect, abuse, dependency, termination of parental rights, custody, support or visitation, the notice shall be filed no later than ~~twenty~~ thirty days after the first hearing~~ or ten days after the initial entry of appearance of counsel, whichever occurs first~~. In actions involving delinquency, certification for criminal proceedings in district court, ~~recall,~~ truancy or status matters, the notice shall be filed no later than twenty days after the first hearing. In misdemeanor actions against adults, the notice shall be filed no later than 7 days after arraignment. In no event shall the notice be filed later than adjudication. Failure to file a timely notice precludes any change of judge under this rule.

(c) Assignment of action. Upon the filing of a notice of change, the assigned judge shall take no further action in the case. The presiding judge shall promptly determine whether the notice is proper and, if so, shall reassign the action. If the presiding judge is also the assigned judge, the clerk shall promptly send the notice to the assistant presiding judge or the Chief Justice, who shall determine whether the notice is proper and, if so, shall reassign the action.

(d) Nondisclosure to court. No party shall communicate to the court, or cause another to communicate to the court, the fact of any party's seeking consent to a notice of change.

(e) Bias rules unaffected. This rule does not affect any rights a party may have under Utah R. Civ. P. 63 and Utah R. Cr. P. 29.

Utah Code of Judicial Administration

Rule 1-204. Executive committees.

Intent:

To establish executive committees of the Council.

To identify the responsibility and authority of the executive committees.

To identify the membership and composition of the executive committees.

To establish procedures for executive committee meetings.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) The following executive committees of the Council are hereby established: (a) the Management Committee; (b) the Policy and Planning Committee; and (c) the Liaison Committee.

(2) The Management Committee shall be comprised of at least four Council members, one of whom shall be the Presiding Officer of the Council. Three Committee members constitute a quorum. The Presiding Officer of the Council or Presiding Officer's designee shall serve as the Chair. When at least three members concur, the Management Committee is authorized to act on behalf of the entire Council when the Council is not in session and to act on any matter specifically delegated to the Management Committee by the Council. The Management Committee is also responsible for managing the agenda of the Council consistently with Rule 2-102 of this Code.

(3) The Policy and Planning Committee~~ is responsible for coordinating Council planning as required by this Code and as necessary for the efficient administration of justice. The committee is also responsible for the coordination and oversight of the development of this Code~~ shall recommend to the Council new and amended rules for the Code of Judicial Administration and the Human Resource Policies and Procedures Manual. The committee shall recommend to the Council periodic and long term planning efforts as necessary for the efficient administration of

justice. The committee shall research and make recommendations regarding any matter referred by the Council.

(4) The Liaison Committee ~~is responsible for overseeing the development, coordination and maintenance of internal communications within the judiciary. It is also responsible for overseeing the development, coordination and maintenance of external communications and relations with the executive and legislative branches, the Utah State Bar, the media and the public~~ shall recommend to the Council legislation to be sponsored by the Council. The committee shall review legislation affecting the authority, jurisdiction, organization or administration of the judiciary. When the exigencies of the legislative process preclude full discussion of the issues by the Council, the Committee may endorse or oppose the legislation, take no position or offer amendments on behalf of the Council.

(5) Members of the executive committees must be members of the Council. Each executive committee shall consist of at least three members appointed by the Council to serve at its pleasure. The ~~Council shall appoint the Chairs of the~~ members of the Policy and Planning Committee and the Liaison Committee shall elect their respective chairs annually.

(6) Each committee shall meet as often as necessary to perform its responsibilities, but a minimum of four times per year. Each committee shall report to the Council as necessary.

(7) The Administrative Office shall serve as the secretariat to the executive committees.

Rule 2-102. Council agenda.

Intent:

To identify the Management Committee's responsibility for establishing the annual schedule of Council meetings and the agenda for each Council meeting.

To establish a procedure for placing items on the Council agenda for consideration.

Applicability:

This rule shall apply to all meetings of the Council.

Statement of the Rule:

(1) The Management Committee is responsible for establishing the agenda for each Council meeting and for establishing an annual schedule of Council meetings.

(2) The annual schedule shall include the date and time of Council meetings and shall provide adequate time to review planning, legislation and budget issues, Council rules and other matters identified by the Committee. The schedule shall be published by the Committee on an annual basis.

(3) The agenda for each Council meeting shall be established by the Management Committee, which is responsible for receiving requests for agenda items from the Boards, the Council's standing committees and other interested agencies, organizations and individuals. The Management Committee shall review all requests received, approve appropriate matters for Council consideration and, with the assistance of the Administrative Office, collect the necessary background information for presentation to the Council. Matters which are approved for Council consideration will be placed on the Council agenda as soon as the necessary background information is available and subject to the scheduling limitations of the Council.

(4) Any items recommended for placement on Council agenda by the Boards, an executive committee, the Council as a whole or individual Council members shall be placed on the agenda by the Management Committee.

Rule 2-207. Annual rulemaking and periodic review of the Code.

Intent:

To establish an annual schedule for the study, review and adoption of Council and Board rules.

To assure the timely periodic review of Council policies for continued applicability.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) Annual rulemaking procedure.

(A) At least once a year, the Council shall publish rules for comment under Rule 2-203.

(B) The Boards of Judges, the standing and ad hoc Committees of the Council or any other interested individual may submit a written request to the Council, through the office of General Counsel, requesting the adoption, modification or repeal of a Council rule. The request shall set forth the proposed rule or amendment or the text of the rule proposed for repeal and shall specify the need for and anticipated effect of the proposal.

(2) ~~Annual~~ Periodic review of the Code.

(A) The Policy and Planning Committee shall adopt a schedule which ensures that the rules contained in this Code are reviewed on a periodic basis but a minimum of once every five years.

(B) Review of the Code shall be for the purpose of determining the continuing viability, utility and practicality of the rules.

(C) Rules which are outdated or inconsistent with other rules, legislation or preferred practice shall be modified, amended or repealed.

Rule 2-211. Compliance with the Code of Judicial Administration and the Code of Judicial Conduct.

Intent:

~~To provide that compliance with this Code and the Code of Judicial Conduct is part of the judicial evaluation program mandated by the Council.~~

To establish the authority of the presiding officer, the Management Committee and the Council to take corrective action in the event of non-compliance with this Code or the Code of Judicial Conduct.

Applicability:

This rule shall apply to judicial and quasi-judicial officers.

Statement of the Rule:

~~(1) Evaluation. Compliance with this Code and the Code of Judicial Conduct shall be included in the judicial evaluation program for judicial and quasi-judicial officers.~~

~~(2) Council action.~~

~~(A)~~ (1) Allegations of failure to comply with the provisions of this Code and the Code of Judicial Conduct may be submitted to the presiding officer of the Council by Council members, the chairs of the Boards, presiding judges, the court administrator or the Judicial Conduct Commission.

~~(B)~~ (2) The presiding officer of the Council, in consultation with the Management Committee, has the discretion to dismiss the allegations, investigate the allegations, take appropriate corrective action or submit the matter to the Council for consideration. Where corrective action is taken, the presiding officer shall report to the Council in executive session the nature of the problem and the corrective action taken. Information which identifies the individual against whom corrective action is taken may be omitted from the report.

~~(C)~~ (3) The Council shall convene in executive session to review those allegations of non-compliance submitted by the presiding officer pursuant to paragraph ~~(B)~~ (2) and, upon a

majority vote, direct dismissal of the allegations, investigation of the allegations, corrective action or referral to the Judicial Conduct Commission. Allegations of non-compliance shall be referred to the Conduct Commission only after consideration by the Council and upon a majority vote of its members.

~~(D)~~ (4) The presiding officer of the Council is empowered to implement any corrective action recommended by the executive management committee or the Council.

~~Rule 3-105. Judicial planning.~~

~~Intent:~~

~~To establish an annual planning process for the judiciary.~~

~~To create a strategic planning capability for court functions which involve multi-year projects.~~

~~To define the role of the Council, the Boards and judges in the planning process for the courts.~~

~~To delineate the responsibilities of the Administrative Office in providing staff support and data resources for the planning process.~~

~~To provide for the publication of an Annual Plan and a Biennial Report.~~

~~Applicability:~~

~~This rule shall apply to the judiciary.~~

~~Statement of the Rule:~~

~~(1) Annual plan.~~

~~(A) The Policy and Planning Committee shall, prior to April 1 of each year, prepare a schedule of activities to ensure the development of an annual plan. The schedule shall provide for:~~

~~(i) input by all presiding judges and court executives to their respective Boards on matters appropriate for inclusion in or exclusion from the Annual Plan;~~

~~(ii) input from standing committees and the State Bar Commission;~~

~~(iii) submission to the Council of prioritized recommendations from each Board; and~~

~~(iv) final approval of the plan by the Council in sufficient time to be integrated into the executive branch budget planning process and the legislative process.~~

~~(B) The Annual Plan shall include all administrative, legislative and funding objectives of the judiciary. The Plan shall:~~

~~(i) state the objectives;~~

~~(ii) identify specific tasks to be completed;~~

~~(iii) identify the date for completion of the objective; and~~

~~(iv) identify the individual responsible for the completion of that objective.~~

~~(C) The administrative office shall:~~

~~(i) prior to the first day of April each year, prepare progress reports concerning each objective of the Annual Plan for the year in progress. These reports shall be provided to court executives, presiding judges, the Boards and the Council for review.~~

~~(ii) provide copies of the Annual Plan to all judges, court executives, standing committees, the State Bar Commission and other interested individuals upon request.~~

~~(iii) monitor all objectives identified in the Annual Plan, take necessary steps to ensure objectives are implemented and provide periodic reports to the Council.~~

~~(2) Biennial report. After review by the Policy and Planning Committee, the administrative office shall, prior to November 1 of each even-numbered year, publish a Biennial Report~~

~~documenting the judicial activities from the previous two fiscal years and identifying future judicial needs.~~

~~(A) Caseload activity information for each fiscal year shall be submitted to the Administrative Office prior to the first day of August. Any information not submitted by this date shall not be included in the Biennial Report and not considered in allocating financial and personnel resources for the upcoming fiscal year.~~

~~(B) The Administrative Office shall complete the necessary computer-generated reports and projections for the two prior fiscal years' activity for inclusion in the Biennial Report by September 1 of each even-numbered year. An adequate data base of demographic and economic information, including projections prepared by state and private organizations, shall be maintained for the purpose of projecting court caseload activity.~~

~~(3) Master plan. Master plans for functional areas of court management shall be prepared by the administrative office as directed by the Council. These master plans shall include a comprehensive description of the current status of the activity, resources available and projections of future needs. Goals, objectives and action plans shall be developed to assist the Council.~~

Rule 3-106. Legislative activities.

Intent:

To identify the Council as the principal authority for establishing and representing the position of the judiciary in legislative matters.

To identify the role of other offices and entities within the judicial branch in legislative matters.

To establish a procedure for considering legislative initiatives by the judiciary.

To establish a procedure for agencies, groups and individuals to seek Council review of legislative initiatives.

Applicability:

This rule shall apply to the legislative activities of the judiciary.

Statement of the Rule:

(1) Authority and responsibility of the council.

(A) The Judicial Council or its Liaison Committee shall be the authority for establishing and representing the position of the judiciary in legislative matters.

(B) The Council shall be the principal authority for coordinating judicial participation in legislative matters.

(C) The Council shall schedule time prior to the legislative session to consider those legislative items proposed for Council action by the Liaison Committee and the Boards.

(D) The Council may endorse, oppose, amend or take no position on proposed legislative initiatives. The Council shall limit its consideration of legislative matters to those which affect the Constitutional authority, the statutory authority, the jurisdiction, the organization or the administration of the judiciary.

(2) Responsibility of presiding officer of council.

(A) The presiding officer shall be responsible for representing the interest of the judiciary through the presentation of "The State of the Judiciary" speech during the regular session of the legislature.

(B) The presiding officer shall be responsible for overseeing the day to day legislative activities of the Court Administrator.

(3) Authority and responsibility of liaison committee.

(A) The Liaison Committee shall meet periodically throughout the year and regularly during the legislative session to consider proposed legislative initiatives which affect the judiciary. The Liaison Committee shall recommend positions to the Council and is authorized to take positions on behalf of the Council when the exigencies of the legislative process preclude full discussion of the issues by the Council.

(B) Any individual, group or agency may request that the Council consider proposed legislative initiatives by transmitting a copy of the legislation with their request to the State Court Administrator. The State Court Administrator shall submit the request to the Liaison Committee. The Liaison Committee shall review the legislative initiative, recommend whether the matter should be placed on the Council agenda, recommend whether a guest should be invited to explain the issues involved and recommend a position to the Council.

(4) Authority and responsibility of the boards. Boards may direct the staff of the Administrative Office to prepare legislation and may recommend that legislation to the Council. The Boards may also review legislative issues and recommend positions to the Council, but may not take public positions independent of the Council.

(5) Authority and responsibility of the court administrator.

(A) Consistent~~ly~~ with this Code and the policies and priorities of the Council, the Court Administrator shall act as the official spokesperson for the judiciary and is authorized to negotiate, on behalf of the Council, positions related to budget and legislative matters.

(B) Under the direction of the Council, the Court Administrator is responsible for coordinating all interaction between the judiciary and the legislative branch including the following:

(i) scheduling meetings between the Council and the legislative branch;

(ii) meeting with legislators and other representatives of the legislative branch to convey the position of the judiciary;

(iii) calling on individual judges to participate in legislative activities.

Rule 3-107. Executive branch policy initiatives.

Intent:

To identify the Council or its designee as the sole authority for establishing and representing the position of the judiciary to the executive branch on policy initiatives.

To identify the role of other judicial offices and entities in executive branch policy making.

To establish a procedure for judicial consideration of executive branch policy initiatives.

To establish a procedure for agencies, groups and individuals to seek Council review of executive branch policy initiatives.

Applicability:

This rule shall apply to the judiciary's involvement in executive branch policy making.

Statement of the Rule:

(1) Authority and responsibility of the council and its liaison committee.

(A) The Council ~~or its Liaison Committee~~ shall ~~be the authority for establishing and representing~~ establish and represent the position of the judiciary to the executive branch on executive branch policy initiatives. ~~The Liaison Committee shall recommend positions to the Council and is authorized to take positions on behalf of the Council when the exigencies of the executive process preclude full discussion of the issues by the Council.~~

(B) The Council may endorse, oppose, or take no position on proposed executive policy initiatives. The Council shall limit its consideration of executive action to that which affects the

Constitutional authority, the statutory authority, the jurisdiction, the organization or the administration of the judiciary.

(2) Authority and responsibility of the boards. Boards may review proposed executive policy initiatives and recommend positions to the Council, but may not take public positions independent of the Council.

(3) Authority and responsibility of the court administrator.

(A) Consistent~~ly~~ with this Code and the policies and priorities of the Council, the Court Administrator shall act as the official spokesperson for the judiciary and is authorized to negotiate, on behalf of the Council, positions related to budget and other executive matters.

(B) Under the direction of the Council, the Court Administrator is responsible for coordinating all interaction between the judiciary and the executive branch including the following:

(i) scheduling meetings between the Council and the executive branch;

(ii) meeting with representatives of the executive branch to convey the position of the judiciary;

(iii) calling on individual judges to participate in executive branch activities;

(iv) receiving requests for Council consideration of executive initiatives from interested individuals, groups or agencies.

(4) Authority of individual judicial officers and employees. Nothing in this rule shall be construed to prohibit individual judges, court administrators or court executives from meeting with representatives of the executive branch on an individual basis to resolve local management or administrative issues consistently with Council policy and the provisions of this Code.

Rule 3-114. The role of the judiciary in the community.

Intent:

To foster a greater role for judges in service to the community.

Applicability:

This rule shall apply to all justices and judges.

Statement of the Rule:

Consistent with the Code of Judicial Conduct and to increase public understanding of and involvement with the administration of justice, the judiciary is encouraged to:

1. identify and address issues of access to justice within the court system including any physical, language, or economic barriers that impede the fair administration of justice;

2. educate civic, educational, business, charitable, and other groups about the court system and judicial process; and

3. take an active part in the community where the participation of the judiciary will serve to increase public understanding and promote public confidence in the integrity of the court system.

Rule 3-306. Court Interpreters.

Intent:

To declare the policy of the Utah State Courts to secure the rights of persons who are unable to understand or communicate adequately in the English language when they are involved in legal proceedings.

To outline the procedure for certification, appointment, and payment of court interpreters.

To provide certified interpreters in all cases in those languages for which certification programs have been established.

Applicability:

This rule shall apply to legal proceedings in the courts of record and not of record. This rule shall apply to interpretation for non-English speaking persons and not to interpretation for the hearing impaired.

Statement of the Rule:

(1) Definitions.

(A) "Appointing authority" means a trial judge, administrative hearing officer, or other officer authorized by law to conduct judicial or quasi-judicial proceedings, or a delegate thereof.

(B) AApproved interpreter@ means an non-certified interpreter who has fulfilled requirements established by the advisory panel.

(C) "Certified interpreter" means a person who has fulfilled the requirements set forth in subsection 4.

(D) "Conditionally-approved interpreter" means a non-certified interpreter who has completed an application form and, after responding to questions about background, education and experience pursuant to subsection (6)(C), has received conditional approval from the appointing authority.

(E) "Code of Professional Responsibility" means the Code of Professional Responsibility for Court Interpreters set forth in Appendix H.

(F) "Legal proceeding" means a civil, criminal, domestic relations, juvenile, traffic or administrative proceeding. Legal proceeding does not include a conference between the non-English speaking person and the interpreter that occurs outside the courtroom, hearing room, or chambers unless ordered by the appointing authority. In juvenile court legal proceeding includes the intake stage.

(G) "Non-English speaking person" means any principal party in interest or witness participating in a legal proceeding who has limited ability to speak or understand the English language.

(H) "Principal party in interest" means a person involved in a legal proceeding who is a named party, or who will be bound by the decision or action, or who is foreclosed from pursuing his or her rights by the decision or action which may be taken in the proceeding.

(I) "Witness" means anyone who testifies in any legal proceeding.

(2) Advisory panel. Policies concerning court interpreters shall be developed by a court interpreter advisory panel, appointed by the council, comprised of judges, court staff, lawyers, court interpreters, and experts in the field of linguistics.

(3) Minimum performance standards. All certified and ~~qualified~~ approved interpreters serving in the court shall comply with the Code of Professional Responsibility.

(4) Certification.

(A) Subject to the availability of funding, and in consultation with the advisory panel, the administrative office shall establish programs to certify court interpreters in the non-English languages most frequently needed in the courts. The administrative office shall:

(i) designate languages for certification;

(ii) establish procedures for training and testing to certify and recertify interpreters; and

(iii) establish, maintain, and issue to all courts in the state a current directory of certified interpreters.

(B) To become certified an interpreter shall:

(i) prior to participation in the training program, pay a fee established by the Judicial Council to the administrative office to offset the costs of training and testing;

(ii) complete training as required by the administrative office;

(iii) obtain a passing score on the court interpreter's test(s) as required by the administrative office;

(iv) not have been convicted of a crime of moral turpitude; and

(v) have complied with the Code of Professional Responsibility if the interpreter has previously provided interpreting services to the Utah courts.

(C) An interpreter may be certified upon submission of satisfactory proof to the advisory panel that the interpreter is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this section.

(5) Recertification.

(A) Subject to the availability of funding, the administrative office shall establish continuing educational requirements for maintenance of certified status.

(B) To maintain certified status, a certified interpreter shall:

(i) comply with continuing educational requirements as established by the administrative office; and

(ii) comply with the Code of Professional Responsibility.

(6) Appointment.

(A) Certified interpreters. When an interpreter is requested or when the appointing authority determines that a principal party in interest or witness has a limited ability to understand and communicate in English, a certified interpreter shall be appointed except under those circumstances specified in subsection (6)(B), (C), or (D).

(B) Approved interpreters.

(i) Standards for appointment. An approved interpreter may be appointed only under the following circumstances:

(a) if there is no certification program established under subparagraph (4) for interpreters in the language for which an interpreter is needed,

(b) if there is a certification program established under subsection (4), but no certified interpreter is reasonably available, or

(c) for juvenile probation conferences, if the probation officer does not speak a language understood by the juvenile.

(ii) Court employees may serve as approved interpreters, but their service shall be limited to short hearings that do not take them away from their regular duties for extended periods.

(iii) The administrative office shall keep a list of all approved interpreters pursuant to subsection (6)(B) unless the interpreter is excluded from the list under subsection (10).

(C) Conditionally-approved interpreters.

(i) Standards for appointment. A conditionally-approved interpreter may be appointed only under the following circumstances:

(a) if there is no certification program established under subparagraph (4) for interpreters in the language for which an interpreter is needed and no approved interpreter is reasonably available,

(b) if there is a certification program established under subsection (4), but no certified or approved interpreter is reasonably available, or

(c) for juvenile probation conferences, if the probation officer does not speak a language understood by the juvenile.

(ii) Procedure for appointment. Before appointing a conditionally-approved interpreter, the appointing authority shall:

(a) evaluate the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence to the accused person involved,

(b) ask questions as to the following matters in an effort to determine whether the interpreter has a minimum level of qualification:

(1) whether the prospective interpreter appears to have adequate language skills, knowledge of interpreting techniques and familiarity with interpreting in a court or administrative hearing setting; and

(2) whether the prospective interpreter has read, understands, and agrees to comply with the code of professional responsibility for court interpreters set forth in appendix H.

(iii) The procedure to conditionally approve a non-certified interpreter must occur every time the interpreter is used.

(iv) Court employees may serve as conditionally-approved interpreters, but their service shall be limited to short hearings that do not take them away from their regular duties for extended periods.

(D) Other interpreters. An interpreter who is neither certified, approved nor conditionally-approved may be appointed when a certified, approved or conditionally-approved interpreter is not reasonably available, or the court determines that the gravity of the case and potential penalty to the accused person involved are so minor that delays attendant to obtaining a certified, approved, or conditionally-approved interpreter are not justified.

(7) Waiver.

(A) A non-English speaking person may at any point in the proceeding waive the right to the services of an interpreter, but only when:

(i) the waiver is approved by the appointing authority after explaining on the record to the non-English speaking person through an interpreter the nature and effect of the waiver;

(ii) the appointing authority determines on the record that the waiver has been made knowingly, intelligently, and voluntarily; and

(iii) the non-English speaking person has been afforded the opportunity to consult with his or her attorney.

(B) At any point in any proceeding, for good cause shown, a non-English speaking person may retract his or her waiver and request an interpreter.

(8) Oath. All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the Code of Professional Responsibility.

(9) Removal in individual cases. Any of the following actions shall be good cause for a judge to remove an interpreter in an individual case:

(A) being unable to interpret adequately, including where the interpreter self-reports such inability;

(B) knowingly and willfully making false interpretation while serving in an official capacity;

(C) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

(D) failing to follow other standards prescribed by law and the Code of Professional Responsibility; and

(E) failing to appear as scheduled without good cause.

(10) Removal from certified or approved list.

Any of the following actions shall be good cause for a court interpreter to be removed from the certified list maintained under subsection (4)(A)(iii) or from the approved list maintained under subsection (6)(B)(iii):

(A) knowingly and willfully making false interpretation while serving in an official capacity;

(B) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

(C) failing to follow other standards prescribed by law and the Code of Professional Responsibility; and

(D) failing to appear as scheduled without good cause.

(11) Discipline

(A) An interpreter may be disciplined for violating the Code of Professional Responsibility. Discipline may include decertification, suspension, probation or other restrictions on the interpreter=s certification or qualification. Discipline by the advisory panel does not preclude independent action by the Administrative Office of the Courts.

(B) Any person, including members of the advisory panel, may initiate a complaint. Upon receipt of a complaint, the advisory panel shall provide written notice of the allegations to the interpreter. Within 20 days after the notice is mailed, the interpreter shall submit a written response to the complaint. The response shall be sent to the administrative office staff assigned to the advisory panel.

(C) Upon receipt of the interpreter=s response, staff shall attempt to informally resolve the complaint. Informal resolution may include stipulated discipline or dismissal of the complaint if staff determines that the complaint is without merit.

(D)(i) A hearing shall be held on the complaint if informal resolution is unsuccessful, or if the advisory panel otherwise determines that a hearing is necessary.

(ii) The hearing shall be held no later than 45 days after notice of the complaint was sent to the interpreter. The advisory panel shall serve the interpreter with notice of the date and time of the hearing, via certified mail, return receipt requested.

(iii) The hearing shall be closed to the public. The interpreter may be represented by counsel and shall be permitted to testify, present evidence and comment on the allegations. The advisory panel may ask questions of the interpreter and witnesses. Testimony shall be under oath and a record of the proceedings maintained. The interpreter may obtain a copy of the record upon payment of any required fee.

(E) The advisory panel shall issue a written decision within 10 days from the conclusion of the hearing. The decision shall be supported by written findings and shall be served on the interpreter via first-class mail.

(F) The interpreter may appeal the advisory panel=s decision to the Judicial Council. The interpreter shall file the notice of appeal with the Judicial Council no later than 20 days after the advisory panel=s decision is mailed to the interpreter. The notice of appeal shall include the interpreter=s written objections to the decision. The Judicial Council shall review the record of the advisory panel proceedings to determine whether the advisory panel correctly applied procedures and sanctions, and to determine whether the advisory panel abused its discretion. The interpreter and advisory panel members are not entitled to attend the Council meeting at which the proceeding is reviewed.

(12) Payment.

(A) Courts of Record.

(i) In courts of record, the administrative office shall pay interpreter fees and expenses

(a) in criminal cases,

(b) in juvenile court cases brought by the state,

(c) in cases filed against the state pursuant to U.R.C.P. 65B(b) or 65C,

(d) in cases filed under the Cohabitant Abuse Act,

(e) in other cases in which the court determines that the state is obligated to pay for an interpreter's services, and

(f) for translation of forms pursuant to paragraph (13).

(ii) In all other civil cases and small claims cases, the party engaging the services of the interpreter shall pay the interpreter fees and expenses.

(iii) Fees. Certified court interpreters shall be paid $30 per hour. Approved interpreters in languages for which there is no certification program shall be paid $25 per hour. Approved interpreters in languages for which there is a certification program shall be paid $20 per hour. Conditionally-approved interpreters in languages for which there is no certification program shall be paid $20.00 per hour. Conditionally-approved interpreters in languages for which there is a certification program shall be paid $15.00 per hour. All other interpreters shall not be paid. Payment to interpreters shall be made in accordance with the Courts Accounting Manual. This section does not apply to court employees acting as interpreters.

(iv) Expenses. Mileage for interpreters will be paid at the same rate as state employees for each mile necessarily traveled in excess of 25 miles one-way. Per diem expenses will be paid at the same rate as state employees.

(v) Procedure for payment. The administrative office shall pay fees and expenses of the interpreter upon receipt of a certification of appearance signed by the clerk of the court or other authorized person. The certification shall include the name, address and social security number of the interpreter, the case number, the dates of appearance, the language interpreted, and an itemized statement of the amounts to be paid.

(B) Courts not of record.

(i) In courts not of record, the local government that funds the court not of record shall pay interpreter fees and expenses in criminal cases in which the defendant is determined to be indigent.

(ii) In small claims cases, the party engaging the services of the interpreter shall pay the interpreter fees and expenses.

(iii) Fees. The local government that funds the court not of record shall establish the amount of the interpreter fees.

(iv) Expenses. The local government that funds the court not of record shall establish interpreter expenses, if any, that will be paid.

(v) Procedure for payment. The local government that funds the court shall pay the interpreter upon receipt of a certification of appearance signed by the clerk of the court. The certification shall include the name, address and social security number of the interpreter, the case number, the dates of appearance, the language interpreted, and an itemized statement of the amounts to be paid.

(13) Translation of court forms. Requests for translation of court forms from English to another language shall be submitted to the advisory panel. The advisory panel shall determine whether the form shall be translated, reviewing such factors as a) whether the English form has been approved by the Judicial Council or the Supreme Court or is in common use throughout the state, and b) whether an approved translation of the form has already been done. Forms determined by the advisory panel to be appropriate for translation shall be submitted by the

advisory panel to a team consisting of at least two translators. In languages for which there is a certification program, translators must be certified interpreters, preferably with some translating experience. In languages for which there is no certification program, translators may be qualified interpreters with extensive court interpreting experience, and preferably with some translating experience, or a professional translation service chosen by the advisory panel. After translation, the administrative office shall distribute the translated documents to the courts statewide.

Rule 3-406. Budget and fiscal management.

Intent:

To develop and maintain the policies and programs of the judiciary through sound fiscal management.

To provide for sound fiscal management through the coordinated and cooperative effort of central and local authorities within the judiciary.

To maintain accountability for appropriated funds, and to maintain a balanced budget.

To cooperate with the Governor and the Legislature in managing the fiscal resources of the state.

Applicability:

This rule shall apply to the management of all funds appropriated by the state to the judiciary.

Statement of the Rule:

(1) Fiscal programs and program directors established. For purposes of fiscal management, the judiciary is divided into the following programs. Each program budget is managed by the designated program director:

(A) Administrative Office	Director of Support Services
(B) Supreme Court	~~Court Executive~~ Appellate Court Administrator
(C) Supreme Court Library	Law Librarian
(D) Court of Appeals	~~Court Executive~~ Appellate Court Administrator
(E) District Court	District Court Administrator
(F) Juvenile Court	Juvenile Court Administrator
(G) Justice Court	Justice Court Administrator
(H) Judicial Education	Judicial Education Manager
(I) Data Processing	Data Processing Manager

Programs shall be divided by geographic division of the courts of record. The budgets of the geographic division shall be managed by the court executives subject to the general supervision of the program director.

(2) Budget management.

(A) Responsibility of the council. The responsibility of the Council is to:

(i) cooperate with the Governor and the Legislature in managing the fiscal resources of the state;

(ii) assure that the budget of the judiciary remains within the limits of the appropriation set by the Legislature; and

(iii) allocate funds as required to maintain approved programs and to assure a balanced judicial budget.

(B) Responsibility of the state court administrator. It is the responsibility of the state court administrator to:

(i) implement the directives of the Council;

(ii) direct the management of the judiciary's budget, including orders to reduce or redirect allocations upon notice to the Council; and

(iii) negotiate on behalf of the Council the position of the judiciary with the executive and legislative branches.

(C) Responsibility of the administrative office. It is the responsibility of the administrative office to:

(i) clear all warrants and other authorizations for the payment of accounts payable for the availability of funds;

(ii) monitor all expenditures;

(iii) provide monthly expenditure reports by court to court executives, program directors, the state court administrator, Boards of Judges and the Council; and

(iv) develop a manual of procedures to govern the payment of accounts payable and the audit thereof. The procedures shall be in conformity with generally accepted principles of accounting and budget management.

(D) Responsibility of the program directors. Within their respective programs, it is the responsibility of the program directors to:

(i) comply with the directives of the Council and the state court administrator;

(ii) administer the reduction or redirection of allocations;

(iii) monitor all expenditures;

(iv) supervise and manage court budgets in accordance with the manual of procedures; and

(v) develop recommendations for fiscal priorities, the allocation of funds, and the reduction or redirection of allocations.

(E) Responsibility of court executives. Within their respective courts, it is the responsibility of court executives to:

(i) comply with the directives of the Council, the state court administrator, and the program director, and to consult with the presiding judge and the individual judges of that jurisdiction concerning budget management;

(ii) develop work programs that encumber no more funds than may be allocated, including any reduction in allocation;

(iii) amend work programs as necessary to reflect changes in priorities, spending patterns, or allocation;

(iv) credit and debit accounts that most accurately reflect the nature of the planned expenditure;

(v) authorize expenditures;

(vi) prepare warrants and other authorizations for payment of accounts payable for submission to the Administrative Office;

(vii) monitor all expenditures; and

(viii) develop recommendations for fiscal priorities, the allocation of funds, and the reduction or redirection of allocations.

(F) Process. After the legislative general session the state court administrator shall consider all sources of funds and all obligated funds and develop a recommended spending plan that most closely achieves the priorities established by the Council at the prior annual planning meeting. The state court administrator shall review the recommended spending plan with the Management Committee and present it to the Judicial Council for approval.

(3) Budget development.

(A) Responsibility of the council. It is the responsibility of the Council to:

(i) establish responsible fiscal priorities that best enable the judiciary to achieve the goals of its policies;

(ii) develop the budget of the judiciary based upon the needs of organizations and the priorities established by the Council;

(iii) communicate the budget of the judiciary to the executive and legislative branches; and

(iv) allocate funds to the geographic divisions of courts in accordance with priorities established by the Council.

(B) Responsibility of the boards. It is the responsibility of the Boards to:

(i) develop recommendations for funding priorities; and

(ii) review, modify, and approve program budgets for submission to the Council.

(C) Responsibility of the state court administrator. It is the responsibility of the state court administrator to:

(i) negotiate on behalf of the Council the position of the judiciary with the executive and legislative branches; and

(ii) develop recommendations to the Council for fiscal priorities and the allocation of funds.

(D) Responsibility of the administrative office. It is the responsibility of the Administrative Office to:

(i) develop a schedule for the timely completion of the budget process, including the completion of all intermediate tasks;

(ii) assist program directors and court executives in the preparation of budget requests; and

(iii) compile the budget of the judiciary.

(E) Responsibility of the program directors. Within their respective programs, it is the responsibility of program directors to review, modify, and approve budget requests.

(F) Responsibility of court executives. Within their respective courts, it is the responsibility of court executives to:

(i) work closely with presiding judges, judges, and staff to determine the needs of the organization; and

(ii) develop a budget request that adequately and appropriately meets those needs.

(G) Process.

(i) Each Board of Judges, each court and committee and each department of the administrative office of the courts may develop, prioritize and justify a budget request. The courts shall submit their requests to the appropriate Board of Judges. The committees and the departments of the AOC shall submit their requests to the state court administrator.

(ii) The Boards shall consolidate and prioritize the requests from the courts and the requests originated by the Board. The state court administrator shall consolidate and prioritize the requests from the committees and departments.

(iii) The state court administrator shall review and analyze all prioritized budget requests and develop a recommended budget request and funding plan. The state court administrator shall review the analysis and the recommended budget request and funding plan with the Council.

(iv) At its annual planning meeting the Council shall consider all prioritized requests and the analysis and recommendations of the state court administrator and approve a prioritized budget request and funding plan for submission to the governor and the legislature.

(4) General provisions.

(A) Appropriations dedicated by the Legislature or allocations dedicated by the Council shall be expended in accordance with the stated intent.

(B) All courts and the Administrative Office shall comply with the provisions of state law and the manual of procedures.

(C) Reductions in allocations, reductions in force, and furloughs may be ordered by the state court administrator with notice to the Council. In amending the work program to reflect a budget cut, reductions in force and furloughs shall be used only when absolutely necessary to maintain a balanced budget. If reductions in force are necessary, they shall be made in accordance with approved personnel procedures. If furloughs are necessary, they should occur for no more than two days per pay period.

Rule 3-415. Auditing.

Intent:

To establish an internal fiscal audit program for the judiciary within the administrative office.

To examine and evaluate court operations by measuring and evaluating the effectiveness and proper application of programs.

Applicability:

This rule shall apply to all courts and the administrative office.

Statement of the Rule:

(1) Schedule of audits.

(A) Periodic. Not less than annually, the audit manager shall prepare a plan of scheduled fiscal and program audits for submission to and approval by the Council Management Committee. The Board of Justice Court Judges shall provide the audit manager a recommendation of the courts not of record to be included in the annual audit schedule submitted to the Council Management Committee.

(B) Amendment to schedule. Any modification or change to the approved plan of scheduled audits shall require prior approval by the Council Management Committee.

(C) Special audits. Requests for special audits not included in the plan shall be submitted in writing to the Council Management Committee and identify the circumstances and need for a special unscheduled audit.

(D) Limited audits. In the event of a reported theft, burglary or other alleged criminal act or suspected loss of monies or property at a court location, or if a change occurs in the personnel responsible for fiduciary duties, the state court administrator may authorize a limited audit.

(2) Authority. The audit manager shall be independent of the activities audited. The audit manager shall have access to all records, documents, personnel and physical properties determined relevant to the performance of an audit. The audit manager shall have the full cooperation and assistance of court personnel in the performance of an audit. The audit manager shall follow generally accepted accounting and performance audit principles for conducting internal audits.

(3) Fiscal audits. Fiscal audits may consist of one or more of the following objectives:

(A) to verify the accuracy and reliability of financial records;

(B) to assess compliance with management policies, plans, procedures, and regulations;

(C) to assess compliance with applicable laws and rules;

(D) to evaluate the efficient and effective use of judicial resources;

(E) to verify the appropriate protection of judicial assets.

(4) Short audits. When a short audit is required or approved, the audit will be conducted without prior notice. The audit shall consist of a one time reconciliation of current cash and receipts and an observation of fiscal management procedures unless otherwise directed by the

State Court Administrator or Management Committee. A written report shall be prepared and exit conference conducted.

(5) Full audits. When a full audit is required or approved, the audit shall be conducted with prior notice. An entrance conference shall be conducted between:

Courts of record: the auditors, court executive, presiding judge, clerk of court and state level administrator.

Courts not of record: the auditors, justice court judge, a local government representative, and state level administrator.

The audit shall be conducted at the convenience of the court.

(6) Performance audits. During the course of conducting a short or full fiscal audit, the audit manager shall observe and review compliance with programs and procedures established by state law and this Code and make written findings and recommendations to be incorporated in the final report. The performance audit shall include an evaluation of the adequacy, effectiveness and efficiency of court operations and management. Objectivity shall be employed by the auditors at all times. Proper recognition shall be given to commendable court operations when appropriate.

(7) Audit reports.

(A) The audit manager shall prepare a written report containing findings and recommendations as a result of the audit. A draft copy of the report shall be provided in advance and presented to:

Court of record: the court executive, presiding judge and state level administrator at the exit conference. An opportunity for written response or comment will be afforded the court executive and presiding judge which will be incorporated into and become part of the final report.

Court not of record: the justice court judge and state level administrator at the exit conference. An opportunity for written response or comment will be afforded the justice court judge which will be incorporated into and become part of the final report.

(B) Copies of the final report shall be provided to:

Courts of record: the Council Management Committee, appropriate Board of Judges, state court administrator, presiding judge, court executive and state level administrator.

Courts not of record: the Council Management Committee, state court administrator, justice court judge, a local government representative, state level administrator and the Board of Justice Court Judges.

(8) Follow-up review.

Courts of record: Within 12 months of a short or full audit, the audit manager shall provide a Follow-up Review form, including only non-compliance audit findings, to the court executive and copy the court level administrator. The court executive will complete the Follow-up Review form reporting on progress made toward compliance and return the form within 30 days to the audit manager and copy the court level administrator.

Courts not of record: Within 12 months of a short or full audit, the audit manager shall provide a Follow-up Review form, including only non-compliance audit findings, to the justice court judge and a copy to the state level administrator. The justice court judge will complete the Follow-up Review form reporting on progress made toward compliance and return a copy of the completed form within 30 days to the audit manager, the state level administrator, and the Board of Justice Court Judges.

Rule 4-201. Record of proceedings.

Intent:

To establish the means of maintaining the official record of court proceedings in all courts of record.

To establish the manner of selection and operation of electronic devices.

To establish the procedure for requesting a transcript for a purpose other than for an appeal.

Applicability:

This rule shall apply to all courts of record.

Statement of the Rule:

(1) Guidelines for court reporting methods. The official verbatim record of court proceedings shall be maintained in accordance with the following guidelines:

(A) Except as provided in this rule, a video recording system shall maintain the official verbatim record of all ~~D~~district ~~C~~court proceedings.

(B) An official court reporter or approved substitute court reporter shall maintain the official verbatim record ~~of~~ in the following ~~D~~district ~~C~~court proceedings ~~using real time reporting methods in computer integrated courtrooms (CIC) in the following proceedings~~:

(i) all evidentiary hearings and trial proceedings and all phases of sentencing in capital felonies;

(ii) all evidentiary hearings after arraignment and trial proceedings in first degree felonies; and

(iii) at the judge's discretion, subject to availability of a court reporter ~~and CIC equipment~~,

(a) in cases in which the judge finds that an appeal of the case is likely, regardless of the outcome in the trial court;

(b) in cases in which the judge determines there is a substantial likelihood a video recording would jeopardize the right to a fair trial or hearing; or

(c) in any other proceeding or portion of a proceeding, upon a showing of good cause.

(C) An audio recording system shall maintain the official verbatim record of all proceedings in the Supreme Court and Court of Appeals.

(D) (i) An audio recording system shall maintain the official verbatim record in proceedings of the district court ~~in which~~ as determined by the Judicial Council ~~has previously determined that the volume of cases in a courtroom is not sufficient to justify the cost of installation of a video recording system~~.

(ii) An audio recording system may be used to maintain the official verbatim record in any hearing in a small claims case.

(E) An audio recording system shall maintain the official verbatim record of all proceedings in the juvenile court, except a juvenile court judge may use, subject to availability, an official court reporter or a video recording system:

(i) if an appeal of the case is likely regardless of the outcome in the trial court, or

(ii) in any other proceeding or portion of a proceeding, upon a showing of good cause.

(F) When the judge determines that the privacy interests of the victim of a crime, a party in a civil case or a witness outweigh the interest of the public in access to a video record of the person, the judge may record the proceeding or portion of the proceeding by use of a court reporter or an audio recording system.

(G) Reporters shall be assigned to cover courtroom proceedings as set forth above. In the event of a conflict in the request for an official court reporter, the trial court executive or managing reporter shall confer with the presiding judge, who shall resolve the conflict.

(H) A recording technology other than the presumed technology may be used if the presumed technology is not available. The use of a technology other than the presumed technology shall not form the basis of an issue on appeal.

(I) The Administrative Office shall periodically study the state of the art of electronic recording technology and technology employed in computer integrated courtrooms and make recommendations to the Judicial Council of systems to be approved.

(2) Operating and maintaining the electronic recording system.

(A) The clerk of the court or designee shall operate the electronic recording system in the courtroom so as to record the proceedings before the court accurately. The operator shall be trained in the operation of the system. A separate log of each recorded proceeding shall be maintained on a form approved by the Administrative Office.

(B) When a video recording system is used to maintain the official verbatim record of court proceedings, at least two original recordings shall be made. One original recording and log shall be filed with the clerk of the court as part of the official court record. A second original recording shall be kept in a secure, off-site storage area. The clerk of the court shall keep the original recording at the courthouse in accordance with the record retention schedule. When an audio recording system is used to maintain the official verbatim record of court proceedings one original recording shall be made.

(C) If a proceeding is recorded by a court reporter, an electronic recording of the proceeding shall not be made, except that a judge may direct a single original of an electronic recording be made as part of the judge's notes for personal use in the deliberative process under Section 63-2-103(18)(b)(ix).

(3) The official court record.

(A) In proceedings in which a video or audio recording system is used, the court's original video or audio tape and accompanying log shall be the official court record. In proceedings in which an official court reporter is used, the reporter's shorthand notes shall be the official court record. The Utah Rules of Appellate Procedure govern the record on appeal.

(B) The official court record shall be filed with the clerk of the court.

(C) The clerk of the court shall be the custodian of the official court record and may release the official court record only to a judge, the clerk of the appellate court, the trial court executive, or the official court transcriber. The clerk shall enter in the docket the name of the recipient and when the official court record was released and returned. Obtaining a copy of the official court record shall be governed by rules regulating access to court records.

(4) Requests for transcripts.

(A) A request for transcript for an appeal is governed by Utah R.App.P. 11 and Utah R.App.P. 12.

(B) A request for transcript for any purpose other than for an appeal shall be accompanied by the fee established by Section 78-56-108 and filed with the court executive. A request for an expedited transcript shall be accompanied by the fee established by Section 78-56-108 and filed with the court executive. The court executive shall assign the preparation of the transcript in the same manner as Utah R.App.P. 12.

Rule 4-202.02. Records classification.**

Intent:

To classify records created or maintained by the judicial branch.

Applicability:

This rule applies to all courts of record and not of record and to the Administrative Office of the Courts.

Statement of the Rule:

(1) Public administrative records. The following administrative records are public, except to the extent they are classified otherwise or contain information classified otherwise by this or other Council rule, or by conflicting state or federal statute, regulation or rule:

(A) court rules, rules of judicial administration, and administrative orders;

(B) the following publications from the administrative office: annual reports, fine/bail schedule, records retention schedules, benchbooks, justice court manuals, staff manuals, instructions to staff, statements of policy, personnel policies and procedures, special reports, judicial nominating commission procedures, and final reports of special task forces, committees or commissions after the same have been released by the Council or the court that requested the study;

(C) names, gender, gross compensation (reported as gross salary and benefits), job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of former and present employees and officers;

(D) final opinions, including concurring and dissenting opinions, and orders that are made in administrative or adjudicative proceedings, except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(E) final interpretations of statutes or rules, unless they are prepared in anticipation of litigation and are not subject to discovery, are attorney work product, or contain privileged communications between the judicial branch and an attorney;

(F) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Utah Code Title 52, Chapter 4, including the record of all votes;

(G) data on individuals that would otherwise be private if the individual who is the subject of the record has given written permission to make the records available to the public;

(H) documentation of the compensation that is paid to a contractor or private provider;

(I) summary data;

(J) records documenting a contractor's or private provider's compliance with the terms of a contract;

(K) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the judicial branch;

(L) contracts entered into by the judicial branch;

(M) any account, voucher, or contract that deals with the receipt or expenditure of funds;

(N) correspondence by and with the judicial branch in which the judicial branch determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(O) empirical data contained in drafts if the empirical data is not reasonably available to the requester elsewhere in similar form and if the judicial branch is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(P) drafts that are circulated to anyone other than a governmental entity, a political subdivision, a federal agency if the judicial branch and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved, a government-managed corporation, or a contractor or private provider;

(Q) drafts that have never been finalized but were relied upon in carrying out action or policy;

(R) original data in a computer program if the judicial branch chooses not to disclose the program;

(S) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(T) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(U) records that would disclose information relating to formal charges or disciplinary actions against a past or present judicial branch employee if the disciplinary action has been completed and all time periods for administrative appeal have expired, and if the formal charges were sustained;

(V) final audit reports;

(W) a notice of violation, a notice of agency action under ' 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by the judicial branch, but not including records that initiate employee discipline.

(2) Public judicial records. The following judicial records are public, except to the extent they are classified otherwise or contain information classified otherwise by this or other Council rule, or by conflicting state or federal statute, regulation or rule:

(A) casefiles;

(B) a copy of the official court record or official minutes of an open court hearing and any transcript of them; and

(C) exhibits which have been offered, identified, marked and admitted in any proceeding in accordance with Rule 4-206.

(D) Notwithstanding Rule 4-202.02(9) and Rule 4-202.03(9), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the juvenile are public records in accordance with ' 78-3a-206. The delinquency history summary shall contain:

(i) the name of the juvenile;

(ii) a listing in chronological order of the infractions, misdemeanors, and felonies for which the juvenile was adjudged to be within the jurisdiction of the juvenile court; and

(iii) the disposition of the court in each of those offenses.

(3) Private administrative records. The following administrative records are private:

(A) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(B) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(C) the personnel file of a current or former employee or applicant for employment;

(D) records associated with the informal reprimand of an individual;

(E) records describing an individual's finances;

(F) other records containing data on individuals the disclosure of which constitutes an unwarranted invasion of personal privacy;

(G) records submitted by a judge to the Judicial Council in support of certification for retention election other than records showing whether the judge has met a standard of performance;

~~(G)~~ (H) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

(4) Private judicial records. The following judicial records are private:

(A) sealed divorce records;

(B) driver's license histories;

(C) records involving the commitment of a person under Utah Code, Title 62A, Chapter 12; and

(D)(i) records containing the name, address or telephone number of a juror or prospective juror or other information from which a juror or prospective juror could be identified or located.

(ii) The judge may order the jurors' records released to the parties or counsel upon the trial of the case, provided the judge orders the parties and counsel not to copy the records or permit the records to be viewed or copied by any other person.

(iii) After the judge has discharged the jurors, the names of the jurors who tried the case shall be a public record, unless a juror requests that his or her name be a private record and the judge finds that the interests favoring privacy outweigh the interests favoring public access. In the interests of justice the judge may delay release of the names for up to 5 business days after discharging the jurors.

(iv) The judge may seal the records of the jurors' names upon its own or a party's motion if the judge:

(a) provides advance written notice to any media representative who requests such notice in that case, to the parties, and to the jurors;

(b) holds a hearing, which must be open to the greatest extent possible;

(c) permits any responsible person to participate in the hearing to the extent consistent with orderly court procedures;

(d) determines there are compelling countervailing interests that support sealing the records;

(e) determines there are no reasonable alternatives to sealing the records sufficient to protect the countervailing interests; and

(f) supports the order to seal the records with written findings and conclusions.

(5) Controlled administrative records. The following administrative records are controlled:

(A) records which contain medical, psychiatric, or psychological data about an individual;

(B) any record which the judicial branch reasonably believes would be detrimental to the subject's mental health or to the safety of an individual if released;

(C) any record which the judicial branch reasonably believes would constitute a violation of normal professional practice or medical ethics if released.

(6) Controlled judicial records. The following judicial records are controlled:

(A) records which contain medical, psychiatric, or psychological data about an individual;

(B) custodial evaluations or home studies;

(C) presentence reports;

(D) the official court record or official minutes of court sessions closed to the public and any transcript of them:

(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or

(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record to the public without prejudice to the interests that justified the closure of the hearing;

(E) any record which the judicial branch reasonably believes would be detrimental to the subject's mental health or to the safety of an individual if released;

(F) any record which the judicial branch reasonably believes would constitute a violation of normal professional practice or medical ethics if released.

(7) Protected administrative records. The following administrative records are protected:

(A) trade secrets as defined in Utah Code ' 13-24-2 if the person submitting the trade secret has provided the judicial branch with the information specified in Utah Code ' 63-2-308;

(B) commercial information or nonindividual financial information obtained from a person if disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future, the person submitting the information has a greater interest in prohibiting access than the public in obtaining access, and the person submitting the information has provided the judicial branch with the information specified in Utah Code ' 63-2-308;

(C) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(D) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with the judicial branch, except that this subparagraph does not restrict the right of a person to see bids submitted to or by the judicial branch after bidding has closed;

(E) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless: public interest in obtaining access to the information outweighs the judicial branch's need to acquire the property on the best terms possible; the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity; in the case of records that would identify property, potential sellers of the described property have already learned of the judicial branch's plans to acquire the property; or, in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the judicial branch's estimated value of the property;

(F) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, before the transaction is completed, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless: the public interest in access outweighs the interests in restricting access, including the judicial branch's interest in maximizing the financial benefit of the transaction; or when prepared by or on behalf of the judicial branch, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the judicial branch.

(G) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(i) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(ii) reasonably could be expected to interfere with audits, or disciplinary or enforcement proceedings;

(iii) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(iv) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(v) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(H) records the disclosure of which would jeopardize the life or safety of an individual, including court security plans;

(I) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental record-keeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(J) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(K) records relating to an ongoing or planned audit until the final audit is released;

(L) records prepared by or on behalf of the judicial branch solely in anticipation of litigation that are not available under the rules of discovery;

(M) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the judicial branch concerning litigation;

(N) records of communications between the judicial branch and an attorney representing, retained, or employed by the judicial branch if the communications would be considered privileged;

(O) drafts, unless otherwise classified as public;

(P) records concerning the judicial branch's strategy about collective bargaining or pending litigation;

(Q) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions;

(R) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute an unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(S) reports by a presiding judge or other designated judge about a judge's performance and requests by a judge to exclude a lawyer from that judge's attorney survey respondent pool;

~~(S)~~ (T) budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the judicial branch's contemplated policies or contemplated courses of action before the judicial branch has implemented or rejected those policies or courses of action or made them public;

~~(T)~~ (U) budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

~~(U)~~ (V) records provided by the United States or by a government entity outside the state that are given to the judicial branch with a requirement that they be managed as protected records if

the providing entity certifies that the record would not be subject to public disclosure if retained by it;

~~(V)~~ (W) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Utah Code ' 52-4-7;

~~(W)~~ (X) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

~~(X)~~ (Y) memoranda prepared by staff and used in the decision-making process by a member of any body charged by law with performing a quasi-judicial function.

(8) Protected judicial records. The following judicial records are protected:

(A) personal notes or memoranda prepared by a judge or any person charged by law with performing a judicial function and used in the decision-making process;

(B) drafts of opinions or orders;

(C) memoranda prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process.

(9) Juvenile court legal records. The following judicial records are juvenile court legal records:

(A) all petitions, pleadings, summonses, subpoenas, motions, affidavits, minutes, findings, orders, decrees;

(B) accounting records;

(C) referral and offense histories;

(D) exhibits and other documents introduced and admitted into evidence in a hearing;

(E) electronic recordings or reporter recordings of testimony in court proceedings;

(F) depositions or interrogatories filed in a case;

(G) transcripts of court proceedings.

(10) Juvenile court social and probation records. The following judicial records are juvenile court social and probation records:

(A) referral reports or forms;

(B) reports of preliminary inquiries;

(C) pre-disposition and social summary reports;

(D) home studies and custody evaluations;

(E) psychological, psychiatric and medical evaluations;

(F) probation, agency and institutional reports or evaluations;

(G) treatment or service plans;

(H) correspondence relating to the foregoing records or reports.

(11) Sealed judicial records. The following judicial records are sealed:

(A) adoption casefiles.

(12) Expunged judicial records. The following judicial records are expunged:

(A) casefiles which have been expunged by court order pursuant to Council rules and applicable statutes.

Rule 4-202.03. Records access.

Intent:

To provide for or limit access to records created or maintained by the judicial branch.

Applicability:

This rule applies to all courts of record and not of record and to the Administrative Office of the Courts.

Statement of the Rule:

(1) Public administrative records. Upon request, every person has the right to inspect a public administrative record free of charge, and the right to obtain a copy of a public administrative record upon payment of the proper fee.

(2) Public judicial records. Upon request, every person has the right to inspect a public judicial record free of charge, and the right to obtain a copy of a public judicial record upon payment of the proper fee. Prior to the conclusion of the proceedings, exhibits shall only be made available for physical inspection by the public if the trial court, in its discretion, finds that physical inspection of the exhibit will not compromise the integrity of the exhibit or the right to a fair trial.

(3) Private administrative records. Upon request, the judicial branch shall disclose a private administrative record to the following:

(A) the subject of the record;

(B) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(C) the legal guardian of a legally incapacitated individual who is the subject of the record;

(D) any other person who has a power of attorney from the subject of the record or who submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or

(E) any person to whom the record must be provided pursuant to court order or a legislative subpoena.

(4) Private judicial records. Upon request, the judicial branch shall disclose a private judicial record to the following:

(A) counsel for the subject of the record in the proceeding;

(B) the subject of the record;

(C) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(D) the legal guardian of a legally incapacitated individual who is the subject of the record;

(E) any other individual who has a power of attorney from the subject of the record or who submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or

(F) any person to whom the record must be provided pursuant to a court order.

(5) Controlled administrative records. Upon request, the judicial branch shall disclose a controlled administrative record to the following:

(A) a physician, psychologist, or certified social worker upon submission of a notarized release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided below; or

(B) any person to whom the record must be provided pursuant to court order or a legislative subpoena.

A person who receives a controlled administrative record from the judicial branch may not disclose controlled information from that record to any person, including the subject of the record.

(6) Controlled judicial records. Upon request, the judicial branch shall disclose a controlled judicial record to the following:

(A) counsel for the subject of the record in the proceeding;

(B) the individual who submitted the record;

(C) a physician, psychologist, or certified social worker upon submission of a notarized release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided below; or

(D) any person to whom the record must be provided pursuant to a court order.

A person who receives a controlled judicial record may not disclose controlled information from that record to any person, including the subject of the record.

(7) Protected administrative records. Upon request, the judicial branch shall disclose a protected administrative record to the following:

(A) the person who submitted the record;

(B) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made; or

(C) any person to whom the record must be provided pursuant to court order or a legislative subpoena.

A person who receives a protected administrative record may not disclose protected information from that record to any person, including the subject of the record.

(8) Protected judicial records. Protected judicial records are exempt from disclosure.

(9) Juvenile court legal records. Upon request, the judicial branch shall disclose a juvenile court legal record to the following:

(A) juvenile court personnel;

(B) a court appointed guardian ad litem;

(C) a prosecuting attorney;

(D) attorneys of record representing the child, parents, or other parties to the proceedings including attorneys representing private petitioners;

(E) representatives of agencies vested by court order with the legal custody, guardianship or protective supervision of the subject of the record;

(F) parents or lawful guardians of the subject of the record;

(G) government adult corrections, probation and parole agencies with respect to a proceeding involving the same person in the adult criminal justice system;

(H) federal, state, and local law enforcement agencies having a legitimate interest in a juvenile court case;

(I) staff persons in charge of juvenile detention facilities;

(J) public or private youth service agencies currently providing service to the subject of the record and/or the subject's family;

(K) the subject of the record if age 18 or older;

(L) children's justice centers established by statute;

(M) the Division of Child and Family Services for the purpose of Child Protective Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and administrative hearings in accordance with Section 62A-4a-116.5.

~~(M)~~(N) any person to whom the record must be provided pursuant to a juvenile court order;

~~(N)~~(O) any court requesting the record.

(10) Juvenile court social and probation records. Upon request, the judicial branch shall disclose a juvenile court social or probation record to the following:

(A) juvenile court personnel;

(B) the individual who submitted the record;

(C) a court appointed guardian ad litem;

(D) a prosecuting attorney;

(E) attorneys of record representing the child, parents, or other parties to the proceedings including attorneys representing private petitioners;

(F) representatives of agencies vested by court order with the legal custody, guardianship or protective supervision of the subject of the record;

(G) any person to whom the record must be provided pursuant to a juvenile court order;

(H) any court requesting the record;

(I) government adult corrections, probation and parole agencies with respect to a proceeding involving the same person in the adult criminal justice system;

(J) the Division of Child and Family Services for the purpose of Child Protective Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and administrative hearings in accordance with Section 62A-4a-116.5.

(11) Sealed judicial records. Sealed judicial records may only be disclosed upon court order.

(12) Expunged judicial records. Expunged judicial records are exempt from disclosure.

(13) Sharing records. The court may share records classified as other than public as provided in Section 63-2-206. The court may share records classified as other than public with the Judicial Conduct Commission if the Commission certifies in writing that:

(A) the record is necessary for the investigation, preliminary investigation, or preliminary inquiry of a complaint;

(B) the need for the record outweighs the privacy interest to be protected;

(C) the Commission will take the steps necessary to protect the privacy interests if the record is sent to the Supreme Court as part of the review of the Commission=s order; and

(D) the Commission will restrict access to the record to the same degree as the court.

Rule 4-404. Jury selection and service.

Intent:

~~To establish the process for transition from the master jury lists maintained by the county clerks and those maintained by the Judicial Council.~~

To identify the source lists from which the master jury list is built.

To establish a uniform procedure for jury selection, qualification, and service.

To establish administrative responsibility for jury selection.

To ensure that jurors are well informed of the purpose and nature of the obligations of their service at each stage of the proceedings.

Applicability:

This rule shall apply to all trial courts.

Statement of the Rule:

~~(1) Transition from county master jury list.~~

~~(A) Under ' 78-46-11 (repealed Chapter 219, Laws of Utah 1992), the master jury lists established by the several county clerks in December 1991 are valid as the source of prospective jurors for one year. The authority to establish and draw names from the master jury list for each county shifts from the several county clerks to the Judicial Council on July 1, 1992. A jury panel for a trial initiated or conducted on or after July 1, 1992 is a valid panel if formed from a master~~

~~jury list valid at the time the names of the panel's jurors were drawn from the master list under ' 78-46-12. A jury panel formed from a December 1991 master list for a trial initiated or conducted on or after July 1 is valid if the names of the panel's jurors were drawn from that master jury list pursuant to ' 78-46-12 on or before June 30, 1992.~~

~~(B) The initial master jury lists of the Judicial Council will be established July 1992. Under paragraph (2)(C) of this rule all courts are required to select names from these initial master jury lists for qualification. To qualify prospective jurors and prepare them for service on a jury panel requires approximately three months. Therefore, the Judicial Council recognizes the validity of a jury panel formed from a December 1991 master list for a trial initiated or conducted on or after July 1 and on or before September 30, 1992 if the names of prospective jurors were drawn from that master jury list pursuant to ' 78-46-12 on or before June 30, 1992.~~

~~(2)~~(1) Master jury list and jury source lists; periodic review.

(A) The state court administrator shall maintain a master jury list as defined by Utah Code Ann. ' 78-46-4 for each county.

(B) The master jury list for each county shall be a compilation of the following source lists:

(i) ~~licensed drivers of the county who are 18 years of age or older; and~~ driver licenses and identification cards for persons 18 years of age and older from the Drivers License Division of the Department of Public Safety; and

(ii) the official register of voters ~~of~~ from the ~~county~~ Elections Division of the Office of the Lt. Governor.

(C) The Judicial Council may direct the use of additional source lists to improve, if necessary, the inclusiveness of the master jury list for a county.

(D) ~~Twice~~ At least twice per year the state court administrator shall obtain from the person responsible for maintaining each source list a new edition of the list reflecting any additions, deletions, and amendments to the list. The state court administrator shall renew the master jury list for each county by incorporating the new or changed information. ~~The master jury list shall be established in January and July. Prospective jurors shall be selected and qualified from the January list for trials initiated in April through September and from the July list for trials initiated in October through March~~.

(E) The master jury list shall contain the name, address, and date of birth for each person listed and any other identifying or demographic information deemed necessary by the state court administrator. The state court administrator shall maintain the master list on a data base accessible to the district courts and justice courts of the state.

(F) The state court administrator shall compare the number of persons on each master jury list for a county with the population of the county 18 years of age and older as reported by the Economic and Demographic Data Projections published for the year by the Office of Planning and Budget. The state court administrator shall report the comparison to the Judicial Council at its planning workshop during even numbered years. ~~The first report is due in 1994.~~ The sole purpose of this report is to improve, if necessary, the inclusiveness of the master jury list.

~~(3)~~(2) Term of service and term of availability of jurors.

(A) The following shall constitute satisfactory completion of a term of service of a juror:

(i) service on a jury panel for one trial whether as a primary or alternate juror regardless of whether the jury is called upon to deliberate or return a verdict;

(ii) reporting once to the courthouse for potential service as a juror; or

(iii) expiration of the term of availability.

(B) The term of availability of jurors shall be:

(i) one month for the trial courts of record in Salt Lake county;

(ii) three months for the trial courts of record in Davis, Utah, and Weber counties; and

(iii) six months for all other courts unless otherwise ordered by the court.

~~(4)~~(3) Random selection procedures.

(A) Random selection procedures shall be used in selecting persons from the master jury list for the qualified jury list.

(B) Courts may depart from the principal of random selection in order to excuse or defer a juror in accordance with statute or these rules and to remove jurors challenged for cause or peremptorily.

~~(5)~~(4) Qualified jury list.

(A) For each term of availability as defined above, the state court administrator shall provide, based on a random selection, to the court the number of jurors requested by that court. This shall be the list from which the court qualifies prospective jurors. The names of prospective jurors shall be delivered to the requesting court in the random order in which they were selected from the master jury list. The court shall maintain that random order through summons, assignment to panels, selection for voir dire, peremptory challenges, and final call to serve as a juror; or the court may rerandomize the names of jurors at any step.

(B) For each term of availability the court should request no more than the number of prospective jurors reasonably calculated to permit the selection of a full jury panel with alternates if applicable for each trial scheduled or likely to be scheduled during the term. The number of prospective jurors requested should be based upon the size of the panel plus any alternates plus the total number of peremptory challenges plus the anticipated number of prospective jurors to be excused or deferred from service or removed for cause less the number of jurors excused or deferred to that term.

(C) The clerk of the court shall mail to each prospective juror a qualification form. The prospective juror shall return the form to the clerk within ten days after it is received. The state court administrator shall develop a uniform form for use by all courts. In addition to the information required by statute, the qualification form shall contain inquiries regarding demographic information sufficient to accomplish the purposes of paragraph (1), information regarding the length of service, and procedures and grounds for requesting an excuse or deferral.

(D) If a prospective juror is unable to complete the juror qualification form, the form may be completed by another person. The person completing the form shall indicate that fact on the form, state the reason the form is being completed by someone other than the prospective juror, state his or her name and address, and sign the form in addition to or on behalf of the prospective juror.

(E) If the clerk determines that there is an omission, ambiguity, or error in a returned qualification form, the clerk shall return the form to the prospective juror with instructions to make the necessary addition, clarification, or correction and return the form to the clerk within ten days after it is received.

(F) The clerk of the court shall review all returned qualification forms and record as disqualified any prospective juror defined by statute not to be a competent juror.

(G) The clerk of the court shall notify the state court administrator of any determination that a prospective juror is not competent to serve as a juror, and the state court administrator shall accordingly update the master jury list. A prospective juror disqualified from service because of a temporary disability shall be automatically included in the next qualified jury list following the termination of the disability.

(H) A prospective juror whose qualification form is returned by the United States Postal authorities as "undeliverable," or "moved - left no forwarding address," or "addressee unknown," or other similar statement, shall not be pursued further by the clerk. The clerk shall notify the state court administrator who shall accordingly update the master jury list.

(I) A prospective juror who fails to respond to the qualification form and whose form is not returned by the postal authorities as undeliverable shall be mailed the qualification form a second time with a notice that failure to return the form may result in a court order requiring the prospective juror to appear in person before the clerk to complete the qualification form. If a prospective juror fails to return the qualification form after the second mailing, the qualification form and a summons may be delivered to the sheriff for personal service upon the prospective juror. The summons shall require the prospective juror to complete the qualification form and deliver it to the court within ten days or to appear before the clerk to prepare the form. Any prospective juror who fails to complete the form or to appear as ordered shall be subject to the sanctions set forth in ' 78-46-20.

~~(6)~~(5) Excuse or deferral from service.

(A) No competent juror is exempt from service.

(B) Persons on the qualified juror list may be excused from jury service, either before or after summons, if their service would be an undue hardship or extreme inconvenience to them or to the public. This provision does not limit the authority of a judge to remove a juror for cause in any particular case. The court shall make reasonable accommodations for any prospective juror with a disability.

(C) A prospective juror excused from service because of a temporary hardship shall be included in the qualified jury list for the term following the termination of the hardship unless otherwise ordered by the court.

(D) Without more, being enrolled as a full or part-time post-high school student is not sufficient grounds for excuse from service.

(E) Disposition of a request for excuse from service may be made by the judge presiding at the trial to which panel the prospective juror is assigned, the presiding judge of the court, or the judge designated by the presiding judge for that purpose. The presiding judge may establish written standards by which the clerk of the court may dispose of requests for temporary excuse.

~~(7)~~(6) Summons from the qualified jury list.

(A) After consultation with the judges or the presiding judge of the court, the clerk of the court shall determine the number of jurors needed for a particular day. The number of prospective jurors summoned should be based upon the number of panels, size of the panels, any alternates, the total number of peremptory challenges plus the anticipated number of prospective jurors to be excused or deferred from service or removed for cause. The clerk shall summon the smallest number of prospective jurors reasonably necessary to select a trial jury.

(C) The judge may direct that additional jurors be summoned if, because of the notoriety of the case or other exceptional circumstances, the judge anticipates numerous challenges for cause.

(D) (i) The clerk of the court, or other officer of the court at the direction of the clerk, shall summon jurors from the qualified jury list in the random order in which they appear on the qualified jury list.

(ii) The summons may be by first class mail delivered to the address provided on the juror qualification form or by telephone.

(iii) Mailed summonses shall be on a form approved by the court executive. The summons shall contain a warning regarding the penalty for failure to obey the summons. The summons

may direct the prospective juror to appear at a date, time, and place certain or may direct the prospective juror to telephone the court for further information. The summons shall direct the prospective juror to present the summons for payment. The summons may contain other information determined to be useful to a prospective juror.

(iii) If summons is made by telephone, the clerk shall follow the procedures of paragraph (10) of this rule.

~~(8)~~(7) Assignment of qualified prospective jurors to panels. Qualified jurors may be assigned to panels in the random order in which they appear on the qualified jury list or may be selected in any other random order. If a prospective juror is removed from one panel, that prospective juror may be reassigned to another panel if the need exists and if there are no prospective jurors remaining unassigned.

~~(9)~~(8) Selection of prospective jurors for voir dire. Qualified jurors may be selected for voir dire in the random order in which they appear on the qualified jury list, or may be selected in any other random order.

~~(10)~~(9) Calling additional jurors. If there is an insufficient number of prospective jurors to fill all jury panels, the court shall direct the clerk of the court to summon from the qualified jury list such additional jurors as necessary. The clerk shall make every reasonable effort to contact the prospective jurors in the order listed on the qualified jury list. If after reasonable efforts the clerk fails to contact a juror, the clerk shall attempt to contact the next juror on the list. If the clerk is unable to obtain a sufficient number of jurors in a reasonable period of time, the court may use any lawful method for acquiring a jury.

Rule 4-608. Trials de novo of justice court proceedings in criminal cases.

Intent:

To establish uniform procedures governing trials de novo and hearings de novo of justice court adjudications.

Applicability:

This rule shall apply to district and justice courts in trials de novo ~~proceedings where~~ and hearings de novo in which the notice of appeal is filed with the justice court.

Statement of the Rule:

~~(1) General provisions.~~

~~(A)~~(1) Right to ~~trial de novo~~appeal. ~~Any party to a judgment of the justice court may obtain a trial de novo.~~ Appeal of a judgment or order of the justice court is as provided in Utah Code Ann. Section 78-5-120.

~~(B)~~(2) Venue. The ~~trial de novo of a justice court adjudication in a criminal case~~ appeal shall be heard in the district court location nearest to and in the same county as the justice court from which the appeal is taken. Either party may move for a change of venue under the applicable Rules of Criminal Procedure.

~~(2) Criminal appeals.~~

~~(A) General provisions. The trial de novo of a justice court adjudication in a criminal case shall be held in accordance with Rule 4-803 governing trials de novo in small claims cases, except that no bond for costs on appeal or filing fees shall be required of a criminal defendant.~~

~~(B)~~(3) The notice of appeal. The notice of appeal must be filed within thirty days of the entry of judgment or order. ~~The~~ Within twenty days after receipt of the notice of appeal, the justice court shall transmit to the district court a certified copy of the docket, the information or waiver of information, the judgment and sentence and other orders and papers filed in the case ~~within twenty days after receipt of the notice of appeal~~.

~~(C)~~(4) Stay of judgment. Upon the filing of the notice of appeal and the issuance of a certificate of probable cause as provided for in the Rules of Criminal Procedure, the judgment of the justice court shall be stayed.

~~(D)~~(5) Orders ~~governing trial de novo~~. Upon the filing of the notice of appeal, the district court shall issue all further orders governing the trial de novo or hearing de novo, including posting of bail and release from custody.

~~(E) Disposition.~~(6) Proceedings and order of the district court. The ~~trial de novo shall be conducted in the~~ district court ~~as if the matter were originally filed in that court and~~ shall conduct anew the proceedings on which the judgment or order appealed from are based. Unless the case is remanded, the disposition of fine revenue shall be according to district court procedures. Upon entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court which rendered the original judgment notice of the manner of disposition of the case. ~~Such notice shall be for informational purposes only and shall not be construed as a remand of the case inasmuch as a remand of a de novo proceeding is not authorized.~~

(7) Remand. The district court may dismiss the appeal and remand the case to the justice court if the appellant:

(A) fails to appear,

(B) fails to take steps necessary to prosecute the appeal, or

(C) requests the appeal be dismissed.

Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court as required by Utah Code Ann. Section 78-5-120.

~~(F) Appeal from de novo review. The prosecution may take an appeal from a de novo review of the district court only as provided for in the Rules of Criminal Procedure.~~

~~(G)~~(8) Traffic convictions. Notwithstanding the filing of a notice of appeal, if a person is convicted of a traffic offense in justice court, the justice court shall require the person to surrender all of his or her license certificates and the justice court shall forward them with the record of conviction to the Driver License Division within ten days as provided in Utah Code Ann. Section 53-3-218.

Rule 4-704. Authority of court clerks to extend payment schedule and dismiss citations.

Intent:

To establish the authority of court clerks to extend the time for payment of bail.

To establish the authority of court clerks to dismiss citations issued for certain offenses.

To establish a uniform procedure for court clerks to extend time for payment of bail and to dismiss citations.

Applicability:

This rule shall apply to all courts of record and courts not of record.

Statement of the Rule:

(1) Unless otherwise ordered by the judge, the clerk of the court, for reasonable cause, is authorized to allow a defendant an extension of time to post bail.

(2) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss traffic citations for violation of Section 53-3-217 if the defendant presents proof that the defendant possessed a valid driver's license at the time the citation was issued.

(3) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations for violation of Section 41-1a-214 if the defendant presents proof that the defendant possessed a valid registration at the time the citation was issued.

(4) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations for violation of Section 41-12a-303.2 if the defendant presents proof that valid insurance was in effect for the vehicle at the time the citation was issued.

(5) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations for violation of Section 41-12a-302 if the defendant presents proof that valid insurance was in effect for the vehicle at the time the citation was issued.

(6) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations for violation of Section 53-3-227 if the defendant presents proof that the defendant possessed a valid driver's license at the time the citation was issued.

(7) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations for violation of Title 41, Chapter 6, Article 16, Equipment, if the defendant presents proof that the defendant has repaired the mechanical deficiency within 14 days after the citation was issued.

Rule 4-906. Guardian ad litem program.

Intent:

To establish the policy and procedures for the management of the guardian ad litem program.

To establish responsibility for management of the program.

To establish the policy and procedures for the selection of guardians ad litem.

To establish the policy and procedures for payment for guardian ad litem services.

To establish the policy and procedures for complaints regarding guardians ad litem and volunteers.

Applicability:

This rule shall apply to the management of the guardian ad litem program.

This rule does not affect the authority of the Utah State Bar to discipline a guardian ad litem.

Statement of the Rule:

(1) Appointment of director. The Judicial Council shall appoint the Director of the Office of Guardian Ad Litem. The Director shall have the qualifications provided in ' 78-3a-911.

(2) Responsibilities of the director. In addition to responsibilities under ' 78-3a-911, the Director shall have the following responsibilities.

(A) Manage the Office of Guardian ad Litem to ensure that minors who have been appointed a guardian ad litem by the court receive qualified guardian ad litem services.

(B) Develop the budget appropriation request to the legislature for the guardian ad litem program.

(C) Coordinate the appointments of guardians ad litem among different levels of courts.

(D) Monitor the services of the guardians ad litem, staff and volunteers by regularly consulting with users and observers of guardian ad litem services, including judges, court executives and clerks, and by requiring the submission of appropriate written reports from the guardians ad litem.

(E) Determine whether the guardian ad litem caseload in Judicial Districts 1, 5, 6, 7, and 8 is best managed by full or part time employment or by contract.

(F) Select guardians ad litem and staff for employment as provided in this rule. Select volunteers. Coordinate appointment of conflict counsel.

(G) Supervise, evaluate, and discipline guardians ad litem and staff employed by the courts and volunteers. Supervise and evaluate the quality of service provided by guardians ad litem under contract with the court.

(H) Recommend rules of administration and procedure governing the management of the guardian ad litem program to the Judicial Council and Supreme Court.

(I) Prepare and submit to the Judicial Council in August an annual report regarding the development, policy, and management of the guardian ad litem program and the training and evaluation of guardians ad litem, staff and volunteers. The Judicial Council may amend the report prior to release to the Legislative Interim Human Services Committee pursuant to ' 78-3a-911.

(3) Qualification and responsibilities of guardian ad litem. A guardian ad litem shall be admitted to the practice of law in Utah and shall demonstrate experience and interest in the applicable law and procedures. The guardian ad litem shall have the responsibilities established by ' 78-3a-912.

(4) Selection of guardian ad litem for employment.

(A) A guardian ad litem employed by the Administrative Office of the Courts is an at-will employee subject to dismissal by the Director with or without cause.

(B) A guardian ad litem employed by the Administrative Office of the Courts shall be selected by a committee consisting of the following officers:

(i) the Director;

(ii) the trial court executive of the district court and juvenile court; and

(iii) a member of the Utah State Bar Association and a member of the public selected by the Director.

(C) Prior to making a selection, the committee shall provide the name of the finalist to and invite comments regarding the finalist's qualifications from the judges and court commissioners of the judicial district in which the guardian ad litem will primarily practice.

(5) Conflicts of interest and disqualification of guardian ad litem.

(A) In cases where a guardian ad litem has a conflict of interest, the guardian ad litem shall declare the conflict and request that the court appoint a conflict guardian ad litem in the matter. Any party who perceives a conflict of interest may file a motion with the court setting forth the nature of the conflict and a request that the guardian ad litem be disqualified from further service in that case. Upon a finding that a conflict of interest exists, the court shall relieve the guardian ad litem from further duties in that case and appoint a conflict guardian ad litem.

(B) The Administrative Office of the Courts may contract with attorneys to provide conflict guardian ad litem services.

(C) If the conflict guardian ad litem is arranged on a case-by-case basis, the Court shall use the order form approved by the Council. The Order shall include a list of the duties of a guardian ad litem. The court shall distribute the Order as follows: original to the case file and one copy each to: the appointed conflict guardian ad litem, the guardian ad litem, all parties of record, the parents, guardians or custodians of the child(ren), the court executive and the Director.

(D) A conflict guardian ad litem's compensation shall not exceed $50 per hour or $1000 per case in any twelve month period, whichever is less. Under extraordinary circumstances, the Director may extend the payment limit upon request from the conflict guardian ad litem. The request shall include justification showing that the case required work of much greater complexity than, or time far in excess of, that required in most guardian ad litem assignments. Incidental expenses incurred in the case shall be included within the limit. If a case is appealed, the limit shall be extended by an additional $400.

(6) Staff and Volunteers.

(A) The Director shall develop a strong volunteer component to the guardian ad litem program and provide support for volunteer solicitation, screening and training. Staff and volunteers shall have the responsibilities established by ' 78-3a-912.

(B) Training for staff and volunteers shall be conducted under the supervision of the attorney guardian ad litem with administrative support provided by the Director. Staff andvolunteers shall receive training in the areas of child abuse, child psychology, juvenile and district court procedures and local child welfare agency procedures. Staff and volunteers shall be trained in the guidelines established by the National Court Appointed Special Advocate Association.

(7) Complaints regarding guardians ad litem, staff and volunteers.

(A) Any person may submit to the Director a complaint regarding a guardian ad litem, staff person or a volunteer. The Director may require that the complaint be submitted in writing. The complaint should state the nature of the complaint and the facts upon which the complaint is based.

(B) If the complaint is by the client, the Director may meet separately or together with the complainant and the guardian ad litem, staff person or volunteer in an effort to resolve the complaint.

(C) If the complaint is by any other person, the Director shall review the complaint and determine whether to invoke the complaint resolution process of paragraph (B).

(D) This subsection (7) shall not apply to conflict guardians ad litem.

(8) Dispute between a guardian ad litem and volunteer.

(A) If a guardian ad litem and a volunteer disagree on the major decisions involved in representation of the client, the Director is to be informed if the dispute cannot be resolved.

(B) A committee comprised of the Director, three guardians ad litem selected by the Director, and three volunteers selected by the Director shall review the dispute, conduct such investigation as it determines reasonable, and enter a determination regarding the resolution of the complaint. The determination may include removal of the guardian ad litem or volunteer from the case and appropriate discipline of the guardian ad litem or volunteer, which may include but is not limited to reprimand, suspension, or termination. The determination of the committee is binding on all participants.

(C) This subsection (8) shall not apply to conflict guardians ad litem.

(9) Private guardians ad litem.

(A) The Director shall maintain a list of guardians ad litem qualified for appointment under §78-7-36. The Director shall provide the list to all district court and juvenile court judges.

(B) To be included on the list a guardian ad litem shall:

(i) apply for inclusion;

(ii) be a member in good standing with the Utah State Bar;

(iii) file permission and fingerprints for screening by the FBI and BCI;

(vi) be screened against the DCFS Child Abuse Data Base and the like data base of any state in which the appointee has resided;

(v) complete initial and continuing training requirements established by the Director;

(vi) file a monthly report on assigned cases in a format approved by the Director;

(vii) be evaluated at the discretion of the Director for competent performance and minimum qualifications; and

(viii) sign an agreement to be removed from the list for failure to perform in a competent manner as determined by the Director or for failure to meet minimum qualifications.

(B) A guardian ad litem appointed under §78-7-36 is subject to the complaint process provided in subsection (7) and the dispute resolution process provided in subsection (8).

Rule 9-102. Caseload report requirements.

Intent:

To establish the caseload reporting requirements for Justice Courts.

Applicability:

This rule shall apply to all Justice Courts.

Statement of the Rule:

(1) Every Justice Court judge shall direct the clerk to prepare a Monthly Report of Court Caseload or complete the form personally if there is no court clerk.

(2) This report shall be submitted by the ~~tenth~~ 20th day of the month following the report period.

(3) A separate form shall be prepared for each court in which a judge sits.

(4) If the court has had no cases to report during the preceding month, a form shall be submitted to document that no cases were filed or disposed of during the month.